

1 contrary to the State Board's decision in *BKK Corporation* that a discharger under a CAO should be
2 permitted to seek redress from the Executive Officer and the Regional Board prior to appealing to the
3 State Board, VRG was precluded from seeking either remedy. (Stroud Decl. at ¶6; Newman May 2
4 Letter.) The absence of adequate procedural protections provided for VRG in light of the weighty
5 property interests (and liberty interests—since VRG potentially faces criminal sanctions for failure to
6 comply with every term of the CAO) involved in this matter, violates VRG's procedural due process
7 rights.

8 Additionally, the failure of the Regional Board and its staff to provide VRG with any form of
9 evidentiary process in the context of an adjudicative action, (*see* Lauffer Memorandum at p.2, before [or
10 following] issuance of the CAO), violates VRG's rights under the California Administrative Procedures
11 Act ("APA"). Gov. Code § 11400 et. seq. The Lauffer Memorandum and Cal. Code Regs. tit. 23, §§
12 648-648.8 prescribe specific procedures that must be followed in an adjudicative proceeding, such as the
13 issuance of a CAO, because the CAO "determines the rights and duties of a particular person or
14 persons" and the Regional Board (and/or its staff acting upon delegated Board authority) is exercising a
15 "judicial function" as to an individual's rights when it issues a CAO. (Lauffer Memorandum at pp. 1-2).
16 Here the CAO was issued without any formal procedures at all. The Newman May 2 Letter, contrary to
17 this Board's decision in *BKK Corp.*, summarily denies, with no legal basis cited, VRG's request for an
18 evidentiary hearing before the Regional Board. The Newman May 2 Letter avers, again with no legal
19 basis and contrary to the California APA, that an appeal to the State Board is the only recourse available
20 to VRG arising out of the adjudicative function summarily performed by Mr. Newman (in the absence
21 of properly delegated authority) and his subordinates. What Mr. Newman neglects to appreciate in his
22 letter is that in an adjudicative proceeding such as a CAO, evidentiary findings in the CAO should be
23 premised upon quasi-judicial procedures in the first instance—at least where a discharger questions the
24 evidentiary basis for staff findings. The protection of individual rights addressed through Cal. Code
25 Regs. tit. 23, §§ 648-648.8 is no less important when adjudicative decisions are made by Regional Board
26 staff acting in an ex parte manner—than when the Board itself makes a decision upon evidentiary
27 findings. Both have the same conclusive effect on the adversely effected party (*e.g.*, the only remedy is
28

1 an appeal to the State Board), but unlike Board findings which must be premised upon substantial
2 evidence in the record, staff findings in performing the identical adjudicatory function may apparently,
3 according to the Newman May 2 Letter, be premised entirely upon the unilateral decisions of
4 unaccountable Regional Board staff. The California APA and its implementing regulations clearly do
5 not contemplate the wielding of such unfettered discretion by the "decision maker" in adjudicative
6 proceedings. (*See BKK Corporation* at 4-5). The matter should have been referred to the Regional
7 Board for an evidentiary hearing as requested by VRG.

8 III. CONCLUSION

9 Based on the above information, the attached declaration of Mr. Darren Stroud of VRG, and the
10 exhibits and correspondence referenced herein and incorporated by reference, the State Board is required
11 to stay compliance with the six tasks identified in Paragraph I.A herein until the State Board rules on
12 VRG's Petition, or at least until such time as VRG is able to gain access to the Roseville Site and
13 negotiate a feasible compliance schedule with Regional Board Staff and the other Dischargers named
14 under the Orders. Without such relief, VRG will be substantially harmed.

15
16 Dated: May 5, 2008

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
BYRON P. GEE

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19 By: 

BYRON P. GEE

20 Of Nossaman, Guthner, Knox & Elliott
21 Attorneys for Petitioner
22 VRG PROPERTY COMPANY
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Exhibit 1
February 12, 2008 Letter from Gallardo and Associates, Inc. to Mr. Paul Sanders, Engineering
Geologist, Central Valley Regional Water Quality Control Board

GALLARDO & ASSOCIATES, INC.

304 Belle Court, El Dorado Hills, CA 95762
(916) 358-3719 and (916) 358-3719 FAX

Environmental and Geological Services

We solve the problem!

February 12, 2008

California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114
(916) 464-4708

Student _____ Date _____

Staff PRS Date 2/14/2008

Action Comments Sent LEDF - No

Attention: Mr. Paul Sanders, Engineering Geologist

Job No. 003D.07

**Subject: WORKPLAN TO USE CALCLEAN, INC. AT THE FORMER EZ-SERVE SITE
100875 LOCATED AT: 1017 Douglas Boulevard, Roseville, California.**

Dear Mr. Sanders:

As per your request, *Gallardo & Associates, Inc.* is pleased to submit the following workplan to use CalClean, Inc. For the purpose of conducting a 60-day interim remediation pilot test for the following location: **1017 Douglas Boulevard in Roseville, California.**

CalClean, Inc. uses High-Vacuum Dual-Phased Extraction, (HVDPE) as the method of choice during a typical event. Each of CalClean's eight, truck-mounted systems comes equipt with a 25-Hp liquid-ring pump capable of producing vacuums up to 29 inches of mercury, (in/Hg) or capabilities up to 450scfm, (by using the conversion factor of 13.595in/H₂O x 29 in/Hg, the vacuum produced by one of these machines is equivalent to approximately 394.3 in/H₂O). Each system is mounted on a truck bed and has a large propane tank to provide supplemental fuel for the thermal oxidizer. The system also has a 45KVA diesel-powered generator that generates electric power for the entire system. Each of the systems are mounted in a box truck to contain noise and to help the technician during adverse weather conditions such as wind, snow, rain, and hot weather.

The system can be hooked up to as many as six extraction wells or groundwater monitoring wells at a time and can produce up to 130 pounds-per-hour of hydrocarbon vapors. The system is also capable of extracting and destroying free product gasoline from free product producing wells.

Summary of a 60-day Event:

During a typical 60-day event, vapor samples will be obtained from individual extraction wells at the start of the event and every ten days thereafter. Combined well in fluent vapor samples will be obtained at the start of the event and approximately once every five days during the event. If the combined in fluent vapor concentrations reach below 50 ppmv before the end of the 60-day event, the system will be shut-down and rebound testing will be scheduled for the site.

In addition, induced vacuum, (in/H₂O) in several observation wells will be obtained at a minimum of twice a day to determine the radius of influence. Depth to water measurements will be collected a minimum of twice a day in several of the groundwater wells for the purpose of evaluating the draw-down and radius of influence.

CalClean will man the site 24 hours a day and will be able to take the appropriate vacuum and groundwater measurements.

Disposal of Generated Wastewater During a 60-day Event:

Groundwater extracted during the event will be treated through two 500-pound granular activated carbon canisters connected in series. Approximately 100-300 gallons per day of treated groundwater will be reused/recycled in CalClean's liquid ring pump system as makeup water. Any remaining treated groundwater will be discharged onsite in accordance with a sanitary sewer permit or periodically transported via vac. truck for offsite disposal.

Gallardo & Associates, Inc's. Role During the proposed 60-day Event:

Gallardo & Associates, Inc's. will be on-site for the first three days to conduct a more thorough evaluation of the vacuum influences and pseudo groundwater pump test. By this we mean the following:

- During the first 24-hours of operation ***Gallardo & Associates, Inc*** will direct CalClean to set up on only one well, (EX-1, a six-inch diameter well). Vacuum gauges will be set up on MW-2, MW-3, MW-4, EX-2, EX-3, EX-4, and EX-5. We will evaluate the vacuum influences and groundwater elevations every hour for the first eight-hour period, every two-hours for the next eight hours, and every four hours for the last eight-hour period. After completing the first 24-hours, CalClean will remove the hose from well EX-1 and set-up on well MW-3. Vacuum gauges will be set up on MW-2, MW-4, EX-1, EX-2, EX-3, EX-4, and EX-5. We will conduct the same evaluation as we did with EX-1. However, we will be pulling from MW-3. On the third day of operation we will place hoses on VEAS-1 and VEAS-2 and introduce air-sparging to the pilot system. During this phase of operation, vacuum hoses will be placed on wells MW-4, EX-1, EX-2, EX-3, EX-4, and EX-5, (See **Figure 2 Map in Appendix A**). These wells should prevent any off-site plume migration during the pilot testing. Once the data has been collected for the first three days of operation, the vacuum hoses will be connected to EX-1 through EX-5, MW-4, and MW-3 for the duration of the 60-day event. CalClean will then be directed to collect data from each of the wells every eight hours for the remainder of the 60-day event. We should be able to eliminate the wells that are not influenced by the vacuum wells during the first week of operation. After the first 72-hours of operation have been completed, ***Gallardo & Associates, Inc's.*** will visit the site approximately once a week or when needed to evaluate the progress made each week. If production numbers, (hydrocarbon concentrations) fall below an effective removal rate during the first 30-days of operation, we will make a decision whether to continue with an additional 30-day event.

Special Note: A CalClean, Inc. Event is not typically designed to be used as a pilot scale test. At best the High Vacuum Dual Phase Extraction (HVDPE), is used as an interim remedial approach, and is most effective with plume control or stabilization application. However,

depending on the site-specifics, CalClean can effectively be used to remediate a site up to closure. After the sixty day event is completed, we will re-evaluate the site to determine if a fixed-based DPE unit will be needed to remediate this site or whether it can be effectively remediated using CalClean for additional periods of time. Should the former methodology be chosen, then a true DPE pilot test will be proposed.

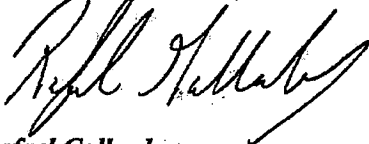
The Underground Storage Tank, (UST) Fund is very familiar with CalClean, Inc.'s capabilities and accomplishments. And, has not had problems with it's use as an effective means of reducing remediation time for site cleanups and in many cases taking a site to closure. Each site is site-specific, and as such, deserves a chance to have proven types of remediation alternatives evaluated via pilot tests.

Upon your concurrence, *CalClean* is ready to set-up on the site as early as February 22, 2008.

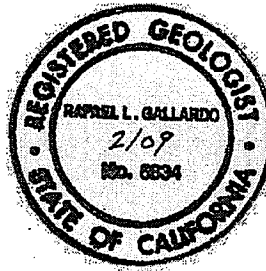
Please call me, if you have any questions at (916) 358-3719.

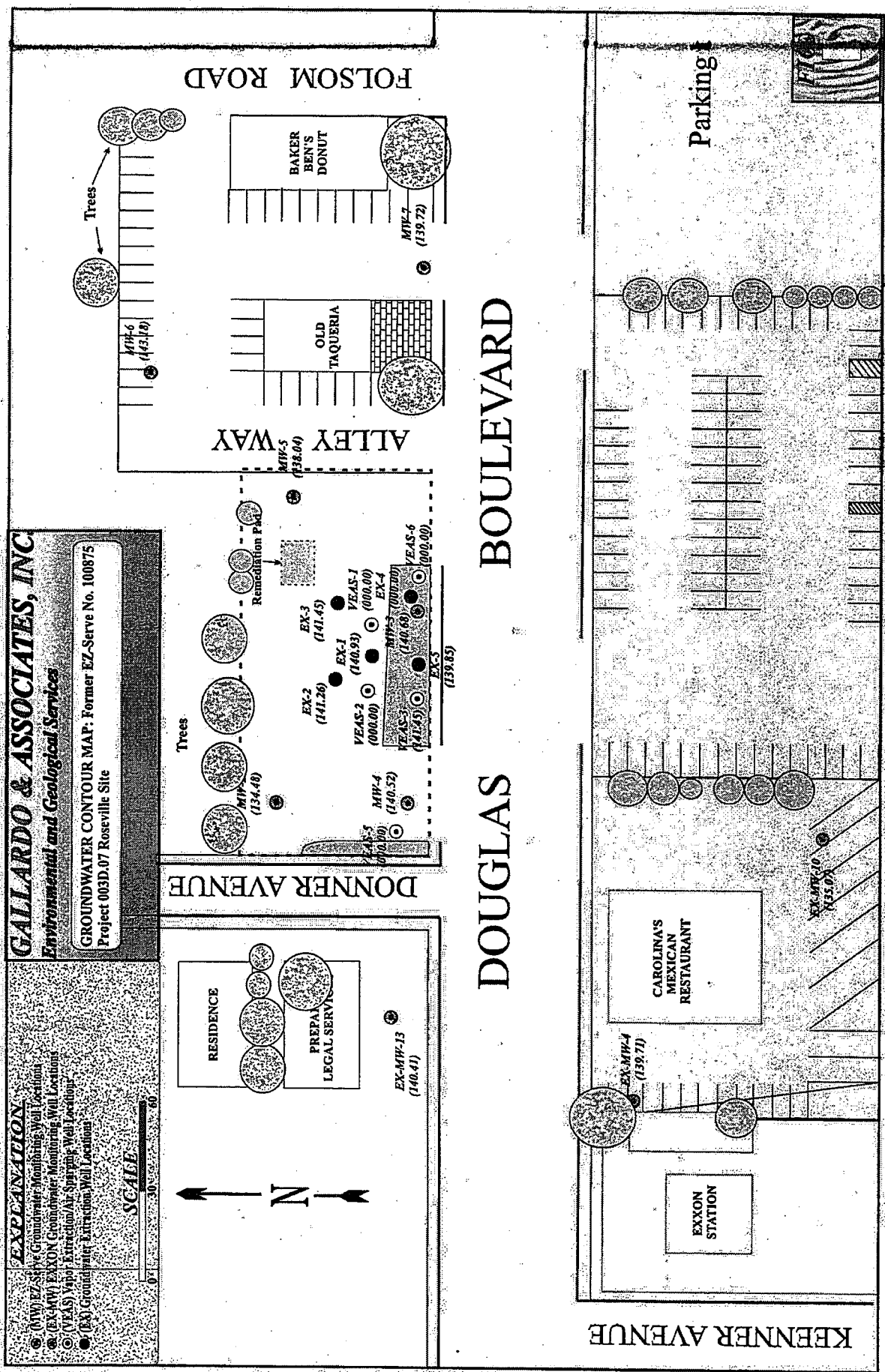
Respectfully,

Gallardo & Associates, Inc.



Rafael Gallardo
President/Professional Geologist, P. G. No. 6834





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PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071

ON MAY 5, 2008, I SERVED THE FOREGOING

**REQUEST TO STAY CENTRAL VALLEY REGIONAL BOARD WATER CODE
§§133304 AND 13267 ORDERS TO CLEANUP, ABATE AND INVESTIGATE
PROPERTY LOCATED AT 1017 DOUGLAS BLVD, ROSEVILLE, PLACER
COUNTY, CA**

on parties to the within action by placing () the original (X) a true copy thereof enclosed in a sealed envelope, addressed as follows:

Pamela Creedon, Executive Officer
California Regional Water Quality Control
Board for the Central Valley
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Jeannette L. Bashaw, Legal Secretary
State Water Resources Control Board
Office of Chief Counsel
1001 "I" Street, 22nd Floor
Sacramento, CA 95814


Jack DelConte, Assistant Executive Officer
California Regional Water Quality Control Board for the Central Valley
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

(X) (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

(X) (By Electronic Service) By emailing true and correct copies to the persons at the electronic notification address(es) shown on the accompanying service list. The document(s) was/were served electronically and the transmission was reported as complete and without error.

Executed on May 5, 2008.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Mina Munoz

THE VALERO COMPANIES
DARREN W. STROUD, Esq. (SBN 210350)
One Valero Way
San Antonio, TX 78249
Telephone: (210) 345-2871
Facsimile: (210) 353-8363

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
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Los Angeles, CA 90071-1602
Telephone: (213) 612-7800
Facsimile: (213) 612-7801

Attorneys for Petitioner
VRG PROPERTIES COMPANY

**BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of
CLEANUP AND ABATEMENT ORDER
NO. R5-2008-0702 FOR RESTRUCTURE
PETROLEUM MARKETING SERVICES
INC; VRG PROPERTIES COMPANY, AND
JEM1, LLC. FORMER "FILL'EM FAST";
1017 DOUGLAS BOULEVARD,
ROSEVILLE, PLACER COUNTY; CA AND
MONITORING AND REPORTING
PROGRAM ORDER NO. R5-2008-0809;
CALIFORNIA WATER CODE SECTION
13267 FOR RESTRUCTURE PETROLEUM
MARKETING SERVICES INC; VRG
PROPERTIES COMPANY AND JEM1, LLC.
FORMER "FILL'EM FAST"; 1017
DOUGLAS BOULEVARD, ROSEVILLE,
PLACER COUNTY

VRG PROPERTIES COMPANY,

PETITIONER

REQUEST No.

DECLARATION

IN SUPPORT OF PETITION FOR REVIEW, AND
REQUEST TO STAY CENTRAL VALLEY
REGIONAL BOARD WATER ORDERS NO. R5-
2008-0702 AND R5-2008-0809

DATE REQUEST FILED: MAY 5, 2008



1 I, Darren W. Stroud, declare as follows:

2 1. I am employed as Counsel, Environmental, Safety and Regulatory Affairs Law
3 for the Valero Energy Corporation ("Valero") and its subsidiary, the VRG Properties Company
4 ("VRG"). I have personal knowledge of the following facts and if called upon to testify, I could and
5 would competently testify thereto.

6 2. On or about October 25, 2007, I received notice of a proposed Cleanup and
7 Abatement order ("Draft CAO") from the Central Valley Regional Water Quality Control Board
8 ("Regional Board") indicating that the Regional Board staff proposed to add Valero as a secondary
9 "responsible party" under the CAO for a contaminated property located at 1017 Douglas Blvd. in the
10 City of Roseville ("Roseville Site"), California. The October 2007 letter was the first instance where
11 anyone at Valero or its subsidiary—VRG—had any indication that VRG might be a potentially liable
12 party in the clean-up of the Roseville Site.

13 3. Comments on the Draft CAO, supported by historical documentation, were due to
14 the Regional Board by October 30, 2007—giving VRG only five days to review the CAO, learn about a
15 site half-way across the country for which it had no current familiarity and scant documentation, and
16 respond to the Regional Board with comments and supporting documentation. These tasks could not be
17 done in five days. Upon VRG's request, Regional Board staff granted VRG a sixteen day extension of
18 the deadline until November 15, 2007, but even this deadline was vastly inadequate since VRG had only
19 a rudimentary understanding of the Roseville Site, which VRG had acquired through Valero's
20 acquisition of the successors in interest to Autotronic Systems, Inc. ("ASI"), a former operator of the
21 Site.

22 4. Based on the fact that the Draft CAO listed Valero as a secondary responsible party
23 and my communications with Regional Board staff during November 2007, I was under the impression
24 that Regional Board staff did not consider Valero or its subsidiary VRG to be a primarily responsible
25 party for the Roseville Site. Regional Board staff did indicate that Valero, and by extension VRG,
26 would be named as a responsible party for the primary purpose of asserting pressure on the true
27 primarily responsible party, Restructure Petroleum Marketing Services ("RPMS"). RPMS and its
28 predecessors had been conducting site investigations, monitoring, sampling, and cleanup activities at the

1 Roseville Site since at least 1992, and I understood RPMS was preparing to implement a “remedial
2 system” at the Site. The predecessor in interest of RPMS, EZ-Serve, Inc., agreed in 1985 to assume all
3 environmental duties and obligations of ASI and to indemnify ASI for any past environmental
4 contamination and to take responsibility for any future cleanup of any environmental contamination at
5 the Roseville Site. When RPMS acquired the stock of ASI, it knowingly assumed responsibility to
6 remedy any future environmental liability that might be attributable to the Roseville Site and ASI’s prior
7 activities at the Site. Regional Board staff wanted VRG to pressure RPMS to better adhere to Regional
8 Board directions and timelines regarding cleanup of the Roseville Site, and VRG was not opposed to
9 assisting the Board in this regard. VRG timely submitted comments suggesting changes to the Draft
10 CAO and requesting that its status as a “non-primary” (i.e., secondary) responsible party be recognized
11 in the Final CAO. VRG never received a copy of the Draft Monitoring and Reporting Program Order
12 for review and comment.

13 5. I heard nothing further from the Regional Board staff until April 11, 2008 when VRG
14 environmental personnel showed me a copy of the Final Cleanup and Abatement Order No. R5-2008-
15 0702 (the “Final CAO”) and Monitoring and Reporting Program Order No. R5-2008-0809 (collectively,
16 the “Orders”) for the Roseville Site. None of the substance of VRG’s prior comments, other than a
17 change in the text to name VRG rather than Valero, was reflected in the text of the Orders, and there was
18 no explanation why Regional Board staff had ignored VRG’s previous comments—which I believed
19 were constructive and reflective of a willingness to work cooperatively with the Regional Board to
20 achieve Site closure. I am particularly puzzled as to why VRG’s proposed revisions to what are now
21 Sections 18 and 23 of the Final CAO, on pages 5 and 6, were rejected. The language requested was
22 nearly identical to language found in other contemporaneously issued CAOs by the Central Valley
23 Regional Board. Under the Final CAO, VRG was assigned responsibility to accomplish the exact same
24 tasks as those assigned to RPMS—who has, along with its predecessors, been conducting site
25 investigations, monitoring, sampling, and cleanup activities at the Roseville Site since at least 1992.

26 6. The following tasks in the Orders are required to be completed by June 6, 2008: (a)
27 prepare a detailed site chronology; complete and prepare a report on the results of the “HVDPE” of a 60-
28 day study utilizing CalClean, Inc. arising out of a February 14, 2008 Regional Board staff directive to

1 RPMS—which 60-day study and completion report must be submitted *less than* the 60 days from the
2 time VRG environmental personnel received the Orders; (b) develop and implement a “modified
3 Corrective Action Plan”; (c) develop and implement a work plan to conduct a human health risk
4 assessment at the Roseville Site; (c) develop and submit a Public Participation Plan; and (d) conduct
5 sampling, monitoring and reporting at the Roseville Site. Based on discussions with our technical
6 consultants, it would be infeasible and impossible to complete these tasks as currently required and by
7 the mandated dates in the Orders. As a result, VRG sought to obtain a revision of the compliance dates
8 in the Orders from the Executive Officer of the Regional Board. VRG also sought a hearing before the
9 Regional Board to modify the dates and to evaluate the propriety of naming VRG as a primarily
10 responsible party, particularly given the very limited role (if any) that its successor in interest, ASI,
11 played in causing the current condition of contamination on the Roseville Site, where site investigations,
12 monitoring, sampling, and cleanup activities were already well underway. The Executive Officer,
13 Pamela Creedon, indicated that she was prohibited from being involved in any enforcement matter
14 because she might be called upon to advise the Regional Board on what decision it should make in the
15 event of a hearing. Ms. Creedon directed VRG to her subordinate staff, Jack DelConte, for possible
16 resolution of the issues. Jack DelConte directed us to his subordinate staff Brian Newman, the UST
17 Program Manager for the Regional Board—who indicated that he believed the issued Orders were
18 legally supportable, and he expressed no concern about the fact that meeting the June 6th deadlines
19 would be physically impossible for VRG. Mr. Newman indicated that extensions to the schedule would
20 likely only be modified if all of the named Dischargers agreed to the extensions and made a “collective”
21 request. He also denied VRG’s request for a hearing before the Regional Board. He indicated the only
22 appropriate recourse was appeal of the Orders to the State Board.

23 7. VRG has no current legal interest in the Roseville Site. Furthermore, VRG has no
24 current access rights to the Roseville Site. VRG is unaware of any contact that ASI has had with the site
25 since its transfer in 1985. Assuming access rights could be obtained in the next few weeks and the
26 required workplans, HVDPE pilot study, site investigations, monitoring, sampling, etc., for the Roseville
27 Site expediently approved by Regional Board staff, VRG’s technical consultants have concluded that all
28 of the compliance milestones currently set for completion by June 6, 2008 could possibly be

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PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071

ON MAY 5, 2008, I SERVED THE FOREGOING

DECLARATION OF DARREN STROUD

on parties to the within action by placing () the original (X) a true copy thereof enclosed in a sealed envelope, addressed as follows:

Pamela Creedon, Executive Officer
California Regional Water Quality Control
Board for the Central Valley
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Jeannette L. Bashaw, Legal Secretary
State Water Resources Control Board
Office of Chief Counsel
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

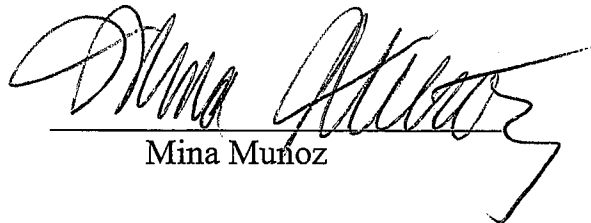
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California Regional Water Quality Control Board for the Central Valley
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

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Executed on May 5, 2008.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Mina Muñoz

1 THE VALERO COMPANIES
2 DARREN W. STROUD, Esq. (SBN 210350)
3 One Valero Way
4 San Antonio, TX 78249
5 Telephone: (210) 345-2871
6 Facsimile: (210) 353-8363

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10 Los Angeles, CA 90071-1602
11 Telephone: (213) 612-7800
12 Facsimile: (213) 612-7801

13 Attorneys for Petitioner
14 VRG PROPERTIES COMPANY



15 **BEFORE THE CALIFORNIA**
16 **STATE WATER RESOURCES CONTROL BOARD**

17 In the Matter of

18 CLEANUP AND ABATEMENT ORDER
19 NO. R5-2008-0702 FOR RESTRUCTURE
20 PETROLEUM MARKETING SERVICES
21 INC; VRG PROPERTIES COMPANY, AND
22 JEM1, LLC. FORMER "FILL'EM FAST";
1017 DOUGLAS BOULEVARD,
ROSEVILLE, PLACER COUNTY; CA AND
MONITORING AND REPORTING
PROGRAM ORDER NO. R5-2008-0809;
CALIFORNIA WATER CODE SECTION
13267 FOR RESTRUCTURE PETROLEUM
MARKETING SERVICES INC; VRG
PROPERTIES COMPANY AND JEM1, LLC.
FORMER "FILL'EM FAST"; 1017
DOUGLAS BOULEVARD, ROSEVILLE,
PLACER COUNTY
VRG PROPERTIES COMPANY,

PETITIONER

REQUEST No.

NOTICE OF ERRATA TO DECLARATION IN
SUPPORT OF REQUEST TO STAY CENTRAL
VALLEY REGIONAL BOARD ORDERS NO. R5-
2008-0702 AND R5-2008-0809

[Title 23 of the California Code of Regulations
("CCR") § 2053]

DATE REQUEST FILED: MAY 5, 2008

1 **TO THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:**

2 **PLEASE TAKE NOTICE** the document entitled "Declaration in Support of Petition for
3 Review and Request to Stay Central Valley Regional Boardwater Orders No. R5-2008-0702 and R5-
4 2008-0809" which was emailed and served by overnight courier on May 5, 2008, was mistakenly sent
5 without a signature.

6 Attached hereto and marked Exhibit "A" is the signed Declaration in Support of Petition for
7 Review and Request to Stay Central Valley Regional Boardwater Orders No. R5-2008-0702 and R5-
8 2008-0809 executed by Darren W. Stroud, Counsel, Environmental, Safety and Regulatory Affairs Law
9 for the Valero Energy Corporation and its subsidiary, the VRG Properties Company.

10
11 Dated: May 6, 2008

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
BYRON P. GEE

12
13
14 By: 

15 **BYRON P. GEE**
16 Of Nossaman, Guthner, Knox & Elliott
17 Attorneys for Petitioner
18 VRG PROPERTY COMPANY
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1 THE VALERO COMPANIES
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3 One Valero Way
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13 Attorneys for Petitioner
14 VRG PROPERTIES COMPANY

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BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

13 In the Matter of
14 CLEANUP AND ABATEMENT ORDER
15 NO. R5-2008-0702 FOR RESTRUCTURE
16 PETROLEUM MARKETING SERVICES
17 INC; VRG PROPERTIES COMPANY, AND
18 JEM1, LLC. FORMER "FILL'EM FAST";
19 1017 DOUGLAS BOULEVARD,
20 ROSEVILLE, PLACER COUNTY; CA AND
21 MONITORING AND REPORTING
22 PROGRAM ORDER NO. R5-2008-0809;
23 CALIFORNIA WATER CODE SECTION
24 13267 FOR RESTRUCTURE PETROLEUM
25 MARKETING SERVICES INC; VRG
26 PROPERTIES COMPANY AND JEM1, LLC.
27 FORMER "FILL'EM FAST"; 1017
28 DOUGLAS BOULEVARD, ROSEVILLE,
PLACER COUNTY

VRG PROPERTIES COMPANY,

PETITIONER

REQUEST No.

DECLARATION

IN SUPPORT OF PETITION FOR REVIEW, AND
REQUEST TO STAY CENTRAL VALLEY
REGIONAL BOARDWATER ORDERS NO. R5-
2008-0702 AND R5-2008-0809

DATE REQUEST FILED: MAY 5, 2008

1 I, Darren W. Stroud, declare as follows:

2 1. I am employed as Counsel, Environmental, Safety and Regulatory Affairs Law
3 for the Valero Energy Corporation ("Valero") and its subsidiary, the VRG Properties Company
4 ("VRG"). I have personal knowledge of the following facts and if called upon to testify, I could and
5 would competently testify thereto.

6 2. On or about October 25, 2007, I received notice of a proposed Cleanup and
7 Abatement order ("Draft CAO") from the Central Valley Regional Water Quality Control Board
8 ("Regional Board") indicating that the Regional Board staff proposed to add Valero as a secondary
9 "responsible party" under the CAO for a contaminated property located at 1017 Douglas Blvd. in the
10 City of Roseville ("Roseville Site"), California. The October 2007 letter was the first instance where
11 anyone at Valero or its subsidiary—VRG—had any indication that VRG might be a potentially liable
12 party in the clean-up of the Roseville Site.

13 3. Comments on the Draft CAO, supported by historical documentation, were due to
14 the Regional Board by October 30, 2007—giving VRG only five days to review the CAO, learn about a
15 site half-way across the country for which it had no current familiarity and scant documentation, and
16 respond to the Regional Board with comments and supporting documentation. These tasks could not be
17 done in five days. Upon VRG's request, Regional Board staff granted VRG a sixteen day extension of
18 the deadline until November 15, 2007, but even this deadline was vastly inadequate since VRG had only
19 a rudimentary understanding of the Roseville Site, which VRG had acquired through Valero's
20 acquisition of the successors in interest to Autotronic Systems, Inc. ("ASI"), a former operator of the
21 Site.

22 4. Based on the fact that the Draft CAO listed Valero as a secondary responsible party
23 and my communications with Regional Board staff during November 2007, I was under the impression
24 that Regional Board staff did not consider Valero or its subsidiary VRG to be a primarily responsible
25 party for the Roseville Site. Regional Board staff did indicate that Valero, and by extension VRG,
26 would be named as a responsible party for the primary purpose of asserting pressure on the true
27 primarily responsible party, Restructure Petroleum Marketing Services ("RPMS"). RPMS and its
28 predecessors had been conducting site investigations, monitoring, sampling, and cleanup activities at the

1 Roseville Site since at least 1992, and I understood RPMS was preparing to implement a "remedial
2 system" at the Site. The predecessor in interest of RPMS, EZ-Serve, Inc., agreed in 1985 to assume all
3 environmental duties and obligations of ASI and to indemnify ASI for any past environmental
4 contamination and to take responsibility for any future cleanup of any environmental contamination at
5 the Roseville Site. When RPMS acquired the stock of ASI, it knowingly assumed responsibility to
6 remedy any future environmental liability that might be attributable to the Roseville Site and ASI's prior
7 activities at the Site. Regional Board staff wanted VRG to pressure RPMS to better adhere to Regional
8 Board directions and timelines regarding cleanup of the Roseville Site, and VRG was not opposed to
9 assisting the Board in this regard. VRG timely submitted comments suggesting changes to the Draft
10 CAO and requesting that its status as a "non-primary" (i.e., secondary) responsible party be recognized
11 in the Final CAO. VRG never received a copy of the Draft Monitoring and Reporting Program Order
12 for review and comment.

13 5. I heard nothing further from the Regional Board staff until April 11, 2008 when VRG
14 environmental personnel showed me a copy of the Final Cleanup and Abatement Order No. R5-2008-
15 0702 (the "Final CAO") and Monitoring and Reporting Program Order No. R5-2008-0809 (collectively,
16 the "Orders") for the Roseville Site. None of the substance of VRG's prior comments, other than a
17 change in the text to name VRG rather than Valero, was reflected in the text of the Orders, and there was
18 no explanation why Regional Board staff had ignored VRG's previous comments—which I believed
19 were constructive and reflective of a willingness to work cooperatively with the Regional Board to
20 achieve Site closure. I am particularly puzzled as to why VRG's proposed revisions to what are now
21 Sections 18 and 23 of the Final CAO, on pages 5 and 6, were rejected. The language requested was
22 nearly identical to language found in other contemporaneously issued CAOs by the Central Valley
23 Regional Board. Under the Final CAO, VRG was assigned responsibility to accomplish the exact same
24 tasks as those assigned to RPMS—who has, along with its predecessors, been conducting site
25 investigations, monitoring, sampling, and cleanup activities at the Roseville Site since at least 1992.

26 6. The following tasks in the Orders are required to be completed by June 6, 2008: (a)
27 prepare a detailed site chronology; complete and prepare a report on the results of the "HVDPE" of a 60-
28 day study utilizing CalClean, Inc. arising out of a February 14, 2008 Regional Board staff directive to

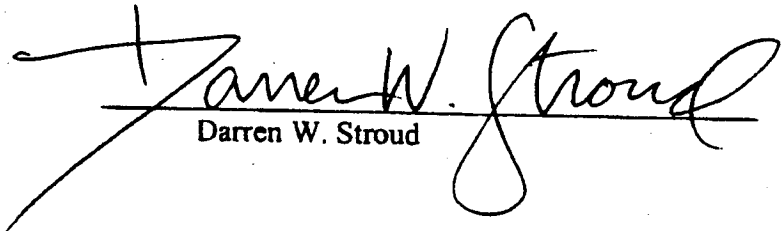
1 RPMS—which 60-day study and completion report must be submitted *less than* the 60 days from the
2 time VRG environmental personnel received the Orders; (b) develop and implement a “modified
3 Corrective Action Plan”; (c) develop and implement a work plan to conduct a human health risk
4 assessment at the Roseville Site; (c) develop and submit a Public Participation Plan; and (d) conduct
5 sampling, monitoring and reporting at the Roseville Site. Based on discussions with our technical
6 consultants, it would be infeasible and impossible to complete these tasks as currently required and by
7 the mandated dates in the Orders. As a result, VRG sought to obtain a revision of the compliance dates
8 in the Orders from the Executive Officer of the Regional Board. VRG also sought a hearing before the
9 Regional Board to modify the dates and to evaluate the propriety of naming VRG as a primarily
10 responsible party, particularly given the very limited role (if any) that its successor in interest, ASI,
11 played in causing the current condition of contamination on the Roseville Site, where site investigations,
12 monitoring, sampling, and cleanup activities were already well underway. The Executive Officer,
13 Pamela Creedon, indicated that she was prohibited from being involved in any enforcement matter
14 because she might be called upon to advise the Regional Board on what decision it should make in the
15 event of a hearing. Ms. Creedon directed VRG to her subordinate staff, Jack DelConte, for possible
16 resolution of the issues. Jack DelConte directed us to his subordinate staff Brian Newman, the UST
17 Program Manager for the Regional Board—who indicated that he believed the issued Orders were
18 legally supportable, and he expressed no concern about the fact that meeting the June 6th deadlines
19 would be physically impossible for VRG. Mr. Newman indicated that extensions to the schedule would
20 likely only be modified if all of the named Dischargers agreed to the extensions and made a “collective”
21 request. He also denied VRG’s request for a hearing before the Regional Board. He indicated the only
22 appropriate recourse was appeal of the Orders to the State Board.

23 7. VRG has no current legal interest in the Roseville Site. Furthermore, VRG has no
24 current access rights to the Roseville Site. VRG is unaware of any contact that ASI has had with the site
25 since its transfer in 1985. Assuming access rights could be obtained in the next few weeks and the
26 required workplans, HVDPE pilot study, site investigations, monitoring, sampling, etc., for the Roseville
27 Site expediently approved by Regional Board staff, VRG’s technical consultants have concluded that all
28 of the compliance milestones currently set for completion by June 6, 2008 could possibly be

1 accomplished by September 15, 2008. However, the June 6th deadlines cannot be met, and it is not
2 clear that RPMS and JEMI, LLC, the more appropriately designated primary responsible parties, are
3 amenable to an agreement whereby all three named Dischargers would submit a collective request to
4 extend the June 6th, deadlines. Nor is it clear to me that Regional Board staff, based on previous
5 communications with VRG representatives, would actually grant an extension in lieu of initiating further
6 enforcement proceedings.

7 I declare under the penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed this 5th day of May, 2008 in Wilmington, California.

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11 
12 Darren W. Stroud
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1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox &
Elliott, LLP, 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071

5 ON MAY 6, 2008, I SERVED THE FOREGOING

6 **DECLARATION IN SUPPORT OF PETITION FOR REVIEW, AND REQUEST TO**
7 **STAY CENTRAL VALLEY REGIONAL BOARDWATER ORDERS R5-2008-0702**
8 **AND R5-2008-0809**

9 on parties to the within action by placing () the original (X) a true copy thereof enclosed in a
sealed envelope, addressed as follows:

10 Pamela Creedon, Executive Officer
11 California Regional Water Quality Control
Board for the Central Valley
12 11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Jeannette L. Bashaw, Legal Secretary
State Water Resources Control Board
Office of Chief Counsel
1001 "T" Street, 22nd Floor
Sacramento, CA 95814

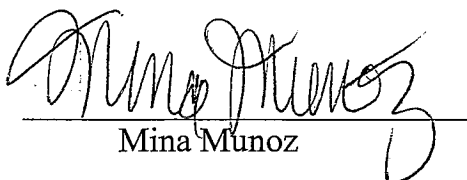
13 Jack DelConte, Assistant Executive Officer
14 California Regional Water Quality Control Board for the Central Valley
11020 Sun Center Drive, #200
15 Rancho Cordova, CA 95670

16 (X) (By Overnight Service) I served a true and correct copy by overnight delivery service for
17 delivery on the next business day. Each copy was enclosed in an envelope or package
18 designated by the express service carrier; deposited in a facility regularly maintained by
the express service carrier or delivered to a courier or driver authorized to receive
19 documents on its behalf; with delivery fees paid or provided for; addressed as shown on
the accompanying service list.

20 (X) (By Electronic Service) By emailing true and correct copies to the persons at the
21 electronic notification address(es) shown on the accompanying service list. The
document(s) was/were served electronically and the transmission was reported as
22 complete and without error.

23 Executed on May 6, 2008.

24 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that
25 the foregoing is true and correct.

26 
27 Mina Munoz
28

1 THE VALERO COMPANIES
2 DARREN W. STROUD, Esq. (SBN 210350)
3 One Valero Way
4 San Antonio, TX 78249
5 Telephone: (210) 345-2871
6 Facsimile: (210) 353-8363

7 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
8 BYRON P. GEE, Esq. (SBN 190919)
9 445 South Figueroa Street, 31st Floor
10 Los Angeles, CA 90071-1602
11 Telephone: (213) 612-7800
12 Facsimile: (213) 612-7801

13 Attorneys for Petitioner
14 VRG PROPERTIES COMPANY

15 **BEFORE THE CALIFORNIA**
16 **STATE WATER RESOURCES CONTROL BOARD**

17 In the Matter of

SWRCB/OCC FILE NO. A-1930

18 CLEANUP AND ABATEMENT ORDER
19 NO. R5-2008-0702 FOR RESTRUCTURE
20 PETROLEUM MARKETING SERVICES
21 INC; VRG PROPERTIES COMPANY, AND
22 JEM1, LLC. FORMER "FILL'EM FAST";
1017 DOUGLAS BOULEVARD,
ROSEVILLE, PLACER COUNTY; CA AND
MONITORING AND REPORTING
PROGRAM ORDER NO. R5-2008-0809;
CALIFORNIA WATER CODE SECTION
13267 FOR RESTRUCTURE PETROLEUM
MARKETING SERVICES INC; VRG
PROPERTIES COMPANY AND JEM1, LLC.
FORMER "FILL'EM FAST"; 1017
DOUGLAS BOULEVARD, ROSEVILLE,
PLACER COUNTY
VRG PROPERTIES COMPANY,

PROOF OF SERVICE

[Title 23 of the California Code of Regulations
("CCR") § 2053]

DATE REQUEST FILED: MAY 5, 2008

PETITIONER

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox &
5 Elliott, LLP, 445 South Figueroa Street, 31st Floor, Los Angeles, CA 90071

6 ON MAY 6, 2008, I SERVED THE FOREGOING DOCUMENTS AS FOLLOWS:

- 7 1. **PETITION FOR REVIEW OF ORDERS R5-2008-0702 AND R5-2008-0809 (WITH**
8 **EXHIBITS)**
- 9 2. **REQUEST TO STAY CENTRAL VALLEY REGIONAL BOARD ORDERS R5-**
10 **2008-0702 AND R5-2008-0809**
- 11 3. **DECLARATION IN SUPPORT OF PETITION FOR REVIEW, AND REQUEST TO**
12 **STAY CENTRAL VALLEY REGIONAL, ETC.**
- 13 4. **NOTICE OF ERRATA**

14 on parties to the within action by placing () the original (X) a true copy thereof enclosed in a
15 sealed envelope, addressed as follows:

16 **Mr. Jack Ceccarelli, President**
17 **Restructure Petroleum**
18 **Marketing Services**
19 **205 Hoover Blvd., Suite 101**
20 **Tampa, FL 33609**

Mr. John McIntosh
JEM1, LLC
1911 Douglas Blvd., Suite 85 225
Roseville, CA 95661

21 (X) (By Overnight Service) I served a true and correct copy by overnight delivery service for
22 delivery on the next business day. Each copy was enclosed in an envelope or package
23 designated by the express service carrier; deposited in a facility regularly maintained by
24 the express service carrier or delivered to a courier or driver authorized to receive
25 documents on its behalf; with delivery fees paid or provided for; addressed as shown on
26 the accompanying service list.

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28 electronic notification address(es) shown on the accompanying service list. The
document(s) was/were served electronically and the transmission was reported as
complete and without error.

Executed on May 6, 2008.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.


Mina Munoz

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13 Attorneys for Petitioner
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15 **BEFORE THE CALIFORNIA**
16 **STATE WATER RESOURCES CONTROL BOARD**

17 In the Matter of

18 CLEANUP AND ABATEMENT ORDER
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21 INC; VRG PROPERTIES COMPANY, AND
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23 1017 DOUGLAS BOULEVARD,
24 ROSEVILLE, PLACER COUNTY; CA AND
25 MONITORING AND REPORTING
26 PROGRAM ORDER NO. R5-2008-0809;
27 CALIFORNIA WATER CODE SECTION
28 13267 FOR RESTRUCTURE PETROLEUM
MARKETING SERVICES INC; VRG
PROPERTIES COMPANY AND JEM1, LLC.
FORMER "FILL'EM FAST"; 1017
DOUGLAS BOULEVARD, ROSEVILLE,
PLACER COUNTY
VRG PROPERTIES COMPANY,

PETITIONER

REQUEST No.

NOTICE OF ERRATA TO DECLARATION IN
SUPPORT OF REQUEST TO STAY CENTRAL
VALLEY REGIONAL BOARD ORDERS NO. R5-
2008-0702 AND R5-2008-0809

[Title 23 of the California Code of Regulations
("CCR") § 2053]

DATE REQUEST FILED: MAY 5, 2008

1 **TO THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:**

2 **PLEASE TAKE NOTICE** the document entitled "Declaration in Support of Petition for
3 Review and Request to Stay Central Valley Regional Boardwater Orders No. R5-2008-0702 and R5-
4 2008-0809" which was emailed and served by overnight courier on May 5, 2008, was mistakenly sent
5 without a signature.

6 Attached hereto and marked Exhibit "A" is the signed Declaration in Support of Petition for
7 Review and Request to Stay Central Valley Regional Boardwater Orders No. R5-2008-0702 and R5-
8 2008-0809 executed by Darren W. Stroud, Counsel, Environmental, Safety and Regulatory Affairs Law
9 for the Valero Energy Corporation and its subsidiary, the VRG Properties Company.

10
11 Dated: May 6, 2008

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
BYRON P. GEE

12
13
14 By: 

BYRON P. GEE
Of Nossaman, Guthner, Knox & Elliott
Attorneys for Petitioner
VRG PROPERTY COMPANY

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**BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

13 In the Matter of
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27 FORMER "FILL'EM FAST"; 1017
28 DOUGLAS BOULEVARD, ROSEVILLE,
PLACER COUNTY

VRG PROPERTIES COMPANY,

PETITIONER

REQUEST No.

DECLARATION

IN SUPPORT OF PETITION FOR REVIEW, AND
REQUEST TO STAY CENTRAL VALLEY
REGIONAL BOARD WATER ORDERS NO. R5-
2008-0702 AND R5-2008-0809

DATE REQUEST FILED: MAY 5, 2008

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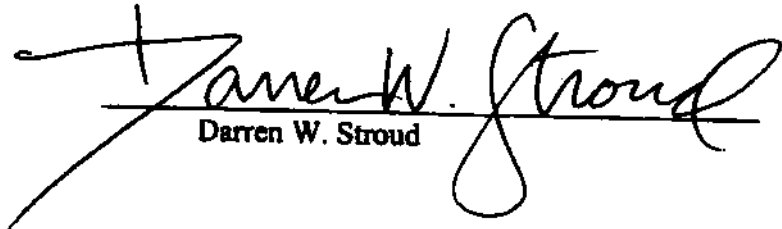
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